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2002 OCT -4 A 11:18  
ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION  
DOCUMENT CONTROL

SECURITIES DIVISION  
1300 West Washington, Third Floor  
Phoenix, AZ 85007-2996  
TELEPHONE: (602) 542-4242  
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E-MAIL: accsec@ccsd.cc.state.az.us

October 3, 2002

The Honorable Janet A. Napolitano  
Attorney General  
1275 West Washington  
Phoenix, Arizona 85007

Re: R14-4-132

Dear Ms. Napolitano:

The above-referenced rule was made on September 26, 2002, by the Arizona Corporation Commission ("ACC"), subject to approval by the Attorney General. Assistant Attorney General Moira McCarthy was consulted during the drafting of the rule. Ms. McCarthy reviewed the rule and provided her informal comments.

The following information is provided for your use in reviewing the enclosed rule for approval pursuant to A.R.S. § 41-1044:

I. Agency Rules Not Published in Code

To my knowledge, the only Securities Division rules not yet published in the Code, other than this rule, are R14-4-131, which was filed with the secretary of state on July 31, 2002; R14-4-301 through R14-4-308, which were filed with the secretary of state on August 6, 2002; and R14-4-121 and R14-4-134, which are currently awaiting approval by your office.

II. Procedures Followed

The ACC's rulemaking process was as follows:

- (1) A Notice of Rulemaking Docket Opening was published in the Arizona Administrative Register in 8 A.A.R. 494, February 1, 2002.
- (2) A Notice of Proposed Rulemaking was published in the Arizona Administrative Register in 8 A.A.R. 2221, May 24, 2002.
- (3) The Notice of Proposed Rulemaking provided notice of the right to request an oral proceeding pursuant to A.R.S. § 41-1023(C). No oral proceeding was requested.

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- (4) No supplemental notices were made in this rulemaking proceeding.
- (5) Public participation pursuant to A.R.S. § 41-1023 was as follows:
  - (a) The ACC accepted written comments through September 26, 2002, the date of the open meeting.
  - (b) No request was made for an oral proceeding and no public hearing or oral proceeding was held.
- (6) The ACC closed the record on the rule at its September 26, 2002, open meeting.
- (7) The ACC made the rule by unanimous vote during the September 26, 2002, open meeting. The signed order making the rule is dated September 30, 2002.
- (8) The ACC complied with the open meeting laws, where applicable.
- (9) The ACC's statutes do not specifically require any other procedures.

III. Supporting Documents

I have enclosed, for your information, the following documents:

- (1) Original and two copies of the Notice of Final Rulemaking, including the preamble and text of the new rule.
- (2) Original and two copies of the Economic, Small Business And Consumer Impact Statement, attached as Exhibit B to the ACC order dated September 30, 2002.
- (3) Original and two copies of the ACC's Agency Certificate.
- (4) One copy of the material incorporated into rule 132 by reference.
- (5) Original and two copies of the ACC's Agency Receipt.
- (6) Original form for Attorney General approval of final rules.
- (7) One copy of the Notice of Rulemaking Docket Opening, as published.
- (8) One copy of the Notice of Proposed Rulemaking, as published.

- (9) One copy of the ACC September 30, 2002, order making the rule subject to Attorney General approval.

Please let me know if you would like any additional copies of these items. We have included a disk containing the Notice of Final Rulemaking in rich text format for the secretary of state. My understanding is that you will forward the final rulemaking packet (including the disk) to the secretary of state.

Please let me know if I can be of any assistance to you in your review process. My direct line is 542-0643. You should also feel free to contact Cheryl Farson, General Counsel for the Division, at 542-0193. Thank you for your cooperation.

Very truly yours,



Mark Sendrow  
Director of Securities

cc: Chairman William A. Mundell (w/o encl.)  
Commissioner Jim Irvin (w/o encl.)  
Commissioner Marc Spitzer (w/o encl.)  
Brian C. McNeil, Executive Secretary (w/o encl.)  
Cheryl Farson, General Counsel (w/o encl.) ✓

# AGENCY CERTIFICATE

for

## NOTICE OF FINAL RULEMAKING

1. Agency name: Arizona Corporation Commission, Securities Division
2. Chapter heading: Chapter 4. Corporation Commission, Securities
3. Code citation for the Chapter: 14 A.A.C. 4
4. The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, listed in alphabetical and numerical order:

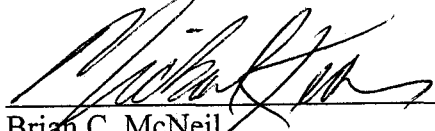
Subchapters, Articles, Parts, and Sections

Action

Article 1, Section R14-4-132

Amendment

5. The rule contained in this package is true and correct as made.

6.   
 Brian C. McNeil  
 Executive Secretary  
 Arizona Corporation Commission

9/30/02  
 Date

7. Exempt from Governor's Regulatory Review Council: A.R.S. § 41-1057

NOTICE OF FINAL RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;

SECURITIES REGULATION

CHAPTER 4. CORPORATION COMMISSION--SECURITIES

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PREAMBLE

1. Sections Affected Rulemaking Action  
R14-4-132 Amendment
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):  
Authorizing statute: A.R.S. § 44-1821  
Implementing statute: A.R.S. §§ 44-1822, 44-1824, 44-1961  
Constitutional authority: Arizona Constitution, Article XI, § 4
3. The effective date of the rule:  
The rule is effective the later of the effective date of the amendments reflected in SEC Release No. 34-44992 or the date pursuant to A.R.S. § 41-1032.
4. A list of all previous notices appearing in the Register addressing the final rule:  
8 A.A.R. 494, February 1, 2002, Notice of Rulemaking Docket Opening  
8 A.A.R. 2221, May 24, 2002, Notice of Proposed Rulemaking
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:  
Name: Cheryl T. Farson

Address: Arizona Corporation Commission, Securities Division  
1300 W. Washington, Third Floor  
Phoenix, AZ 85007-2996

Telephone: (602) 542-4242

Fax Number: (602) 594-7470

E-mail: cf@ccsd.cc.state.az.us

6. An explanation of the rule, including the agency's reasons for initiating the rule making:

A.A.C. R14-4-132 ("rule 132") requires that registered dealers make, maintain, and preserve books and records in compliance with certain specified U.S. Securities and Exchange Commission ("SEC") rules, including 17 CFR 240.17a-3 and 17 CFR 240.17a-4.

The SEC's books and records rules, promulgated under the Securities Exchange Act of 1934, specify minimum requirements with respect to the records that dealers must make, and how long those records and other documents relating to a dealer's business must be kept. The SEC has required that dealers create and maintain certain records so that, among other things, the SEC, self-regulatory organizations, and state securities regulators may conduct effective examinations of dealers. The SEC has amended 17 CFR 240.17a-3 and 17 CFR 240.17a-4. The amendments will be effective May 2, 2003.

The National Securities Market Improvement Act of 1996 prohibits states from establishing books and records rules that differ from, or are in addition to, the SEC's books and records rules.

The Division proposes amending rule 132 to reflect the federal law mandate that state books and records requirements do not differ from the SEC books and records rules and to reflect the SEC's amendments effective May 2, 2003.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, any analysis of each study, and other supporting material:

None.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

An amendment to rule 132 will not diminish a previous grant of authority.

9. The summary of the economic, small business, and consumer impact:

The economic, small business, and consumer impact statement for rule 132 incorporates by reference SEC Release No. 34-44992; File No. S7-26-98, which analyzes the costs, savings, and benefits of amendments to the federal books and records requirements. This analysis is relevant to the Commission's amendment of rule 132 because, by federal mandate, rule 132 is uniform with federal law.

Section 15(h)(1) of the federal Securities Exchange Act of 1934 (15 U.S.C.

§ 78o(h)(1)), adopted in 1996, provides that

No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof shall establish . . . making and keeping records . . . requirements for . . . dealers . . . that differ from, or are in addition to, the requirements in those areas established under this title.

The SEC has amended two of the rules incorporated in rule 132; the amendments will be effective May 2, 2003. The Commission amends rule 132 to reflect the federal law mandate that state books and records requirements do not differ from the SEC books and records rules and to reflect the SEC's amendments.

10. A description of the changes between the proposed rule, including supplemental notices, and the final rule (if applicable):

None.

11. A summary of the comments made regarding the rule and the agency response to them:

The Commission did not receive written comments to the rule.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None.

13. Incorporations by reference and their location in the rule:

The following materials are incorporated by reference in rule 132(A):

17 CFR 240.17a-3 (2002) as amended by 66 Fed. Reg. 55817 (2001)

17 CFR 240.17a-4 (2002) as amended by 66 Fed. Reg. 55817 (2001)

17 CFR 240.15g (2002)

17 CFR 240.15c2-11(2002)

14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:

Not applicable.

15. The full text of the rule follows:



TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND

ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 4. CORPORATION COMMISSION

SECURITIES

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

Section 14-4-132.

R14-4-132. Books and Records of Dealers

R14-4-132. Books and Records of Dealers

- A. Unless otherwise provided by order of the Commission, each registered dealer shall make, maintain, and preserve books and records in compliance with U.S. Securities and Exchange Commission rules 17a-3 (17 CFR 240.17a-3 (1991-2002)), and 17-a4 (17 CFR 240.17a-4 (1991-2002)) as amended in Release No. 34-4992, 66 Fed. Reg. 55817 (2001); 15c2-6 15g (17 CFR 240.15c2-6 (1991-2002)); and 15c2-11 (17 CFR 240.15c2-11 (1991-2002), as amended in Release No. 34-29094, 56 Fed. Reg. 19148 (1991)) all of which are incorporated herein by reference. Copies of the materials are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, from the Commission, and are on file with the office of the secretary of state.
- B. To the extent that the U.S. Securities and Exchange Commission promulgates changes to the above-referenced rules, dealers in compliance with such rules as amended shall not be subject to enforcement action by the Commission for violation of this rule to the extent that the violation results solely from the dealer's compliance with the amended rule.